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OFFICE OF PETITIONS

In re Application of : ON PETITION
Czech et al. :
Application No. 09/852,123 :
Filed: May 8, 2001 :
Atty Docket No. Micronas.6247 :

This is a decision in response to the petition under 37 CFR 1.137(b), filed July 21, 2005, to revive the above-identified application.

The petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to file an appeal brief after filing a Notice of Appeal. Applicant filed a Notice of Appeal on October 20, 2004. Thereafter, Applicant was given two (2) months within which to file an appeal brief. Extensions of time under 37 CFR 1.136 were available. Applicant failed to file an appeal brief. Since no claims were allowed, the application became abandoned on December 20, 2004. See, 37 CFR 1.192 and MPEP 1206¹.

¹ Although failure to file the brief within the permissible time will result in dismissal of the appeal, if any claims stand allowed, the application does not become abandoned by the dismissal, but is returned to the examiner for action on the allowed claims. See MPEP § 1215.04.

The instant petition

Applicant files the instant petition and appeal brief.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed); (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (1).

As to item (1), Applicant has failed to file a proper brief². The brief fails to comply with 37 CFR 41.37(c)³.

Alternatively, Applicant may withdraw the appeal or file a continuing application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

² If there are no allowed claims, the application is abandoned as of the date the brief was due. If the time for filing a brief has passed and the application has consequently become abandoned, the applicant may petition to revive the application, as in other cases of abandonment, and to reinstate the appeal; if the appeal is dismissed, but the application is not abandoned, the petition would be to reinstate the claims and the appeal, but a showing equivalent to that in a petition to revive under 37 CFR 1.137 is required. In either event, a proper brief must be filed before the petition will be considered on its merits. (Emphasis supplied).

³ Any brief filed on or after September 13, 2004 must comply with the requirements set forth in 37 CFR 41.37 and accompanied by the fee under 37 CFR 41.20(b)(2), unless the brief has a certificate of mailing date before September 13, 2004. Accord MPEP 1205.02 Rev. 3, August 2005.

By hand: 2201 South Clark Place
Customer Window
Crystal Plaza Two, Lobby Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



Derek L. Woods
Attorney
Office of Petitions